



Anti-Money Laundering – Client ID and Verification Rules

CLE-TV, November 27, 2019 – 12:00 to 1:00pm
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Objective

Provide lawyers with an overview of the LSBC's client ID and verification rules and rule changes effective January 1, 2020

Part A: Some Brief Background

1. How a lawyer can be at risk
2. The legal debate
3. The *Criminal Code*
4. Federation AML measures
5. LSBC AML measures

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1. How is a lawyer at risk?

Criminals may try to use you to

- provide an appearance of legitimacy to transactions
- try to obtain solicitor-client privilege
- deposit dirty money in your trust account in an attempt to conceal and convert it
- create companies and trusts to disguise the true owners, facilitate transactions

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2. The Legal Debate

- SCC (2015) struck down specific provisions of the *Proceeds of Crime (Money Laundering and Terrorist Financing Act)* and regulations, finding the provisions violated Charter protections against unreasonable search and seizure and rights of security of the person
- As such, lawyers are exempt from reporting clients to FINTRAC
- The exemption is viewed by some as a gap in Canada's AML regime; however, law societies take lawyer regulation seriously and the LSBC takes a strong role

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3. Criminal Code Applies to Lawyers

- Laundering proceeds of crime (s. 462.31(1))
- Possession of property obtained by crime (s. 354)
- Trafficking in property obtained by crime (s.355.2)
- If a lawyer acts (hopefully not intentionally) for a client to launder money from illegal activities, no solicitor-client privilege will apply.

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4. Federation AML Measures

- The Federation of Law Societies is the national coordinating body of Canada's 14 law societies
- The LSBC is integral to the Federation's work
- The Federation adopted model cash rules (2004, updated 2018) and CIV rules (2008, updated 2018), designed to reflect the federal government's objectives under the *Proceeds of Crime (Money Laundering and Terrorist Financing Act)*

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Federation AML Measures (continued)

- Adopted a model trust accounting rule, restricting the use of lawyers' trust accounts to purposes directly connected to providing legal services (2018)
- Adopted a model code of professional conduct (2009)
- A proponent of a national public registry of beneficial owners (brief to House of Commons Standing Committee on Finance for Statutory Review of the PCMLTF Act)

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Federation AML Measures (continued)

- Developed a resource, [Guidance for the Legal Profession - Your Professional Responsibility to Avoid Facilitating or Participating in ML and TF](#) (February 19, 2019)
- In June 2019, a joint working group with the Department of Finance was established to address issues related to ML and TF (with law societies, the Department of Finance and other federal government departments and agencies). The LSBC is participating.

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5. LSBC AML Measures

- CIV, trust accounting, cash, record-keeping and retention rules based on the Federation's model rules
- Annual reporting requirements
- Compliance audits, investigations, discipline, discipline advisories, conduct review summaries, discipline decisions

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LSBC AML Measures (continued)

- BC Code (2013) - Canon 2.1-1(a), rules 3.1-2 (Competence), 3.2-1 (Quality of service), 3.2-7 (Dishonesty, fraud by client), 3.2-8 (Dishonesty, fraud when client an organization)
- Similar ethics rules in the former *Professional Conduct Handbook* in effect prior to the Code
- Practice advice, trust advice, web resources, Benchers' Bulletins, E-Briefs, Notices to the Profession, education

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Part B: Client ID and Verification

LSBC Rules Part 3 – Division 11 – Rules 3-98 to 3-110

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When do the CIV rules apply?

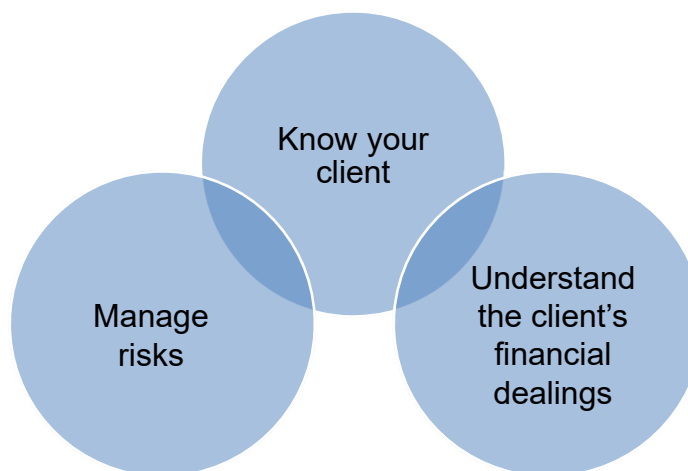
- With limited exceptions, the rules apply to a lawyer retained by a client to provide legal services (R. 3-99(1))
- Being “retained” is not limited to a money retainer; it is broader, as in to counsel or act (note Code r. 3.6-9)
- Example: If you provide free summary advice and there is a “financial transaction”, you are required to verify ID (nothing new)

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Umbrella Rule 3-99 (1.1) – **New**



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Umbrella Rule 3-99(1.1) (continued) - **New**

(1.1) The requirements of this division [Division 11] are in keeping with a lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer, and manage any risks arising from the professional business relationship with the client



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Assessing Risk

Lawyers must abide by various obligations in the BC Code (including the Canons and rules 3.2-7 to 3.2-8 and the commentaries) and the LSBC Rules. Make inquiries when assessing the risk of acting for a client



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Now 6 Main CIV Requirements

1. Identify “client” (R. 3-100)
2. Verify the client’s ID if there is a “financial transaction” (R. 3-102 to 3-106) (**more obligations, new options**)
3. Obtain from the client and record, with the applicable date, information about the **source of money** if a “financial transaction” – (**New R. 3-102(1)(a)**)

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6 Main CIV Requirements (continued)

4. Maintain and retain records (R. 3-107)
5. Withdraw if you know or ought to know you would be assisting in fraud or other illegal conduct (R. 3-109)
6. Monitor the lawyer/client business relationship periodically while retained in respect of a financial transaction and keep a dated record of the measures taken and information obtained– (**New R. 3-110**)

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12 Defined Terms – Rule 3-98

- Pay attention to the definitions
- Some are broadly defined and are different from common usage (e.g. “financial transaction, “money” and “client)
- A “financial transaction” means the receipt, payment or transfer of money on behalf of a client *or giving instructions* on behalf of a client in respect of the receipt, payment or transfer of money

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“Financial Transaction” and “Money”

- “money” **includes** cash, currency, securities and negotiable instruments or other financial instruments, **in any form**, that indicate a person’s title or interest in them, **and electronic transfer of deposits** at financial institutions
- As such, a “financial transaction” can occur without your “client” depositing “money” into your trust account. (**This is not new and has been the case since 2008**)
- Example: A lawyer may give instructions on a client’s behalf in respect of the transfer of shares.

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New or Amended Defined Terms

- “disbursements”, “expenses”, “professional fees” (added, effective July 12, 2019)
- “money” and “securities dealer” (widened, effective January 1, 2020)
- “public authority” was rescinded and replaced with the more succinct definition of “public body” (effective January 1, 2020)

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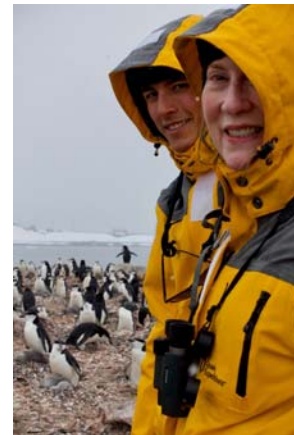
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Who is the “client”? (not new)

In Rule 3-98 the “client” includes:

- another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer; and
- an individual who instructs the lawyer on behalf of a client for a “financial transaction”

Determine who the “client” is at the outset for CIV purposes (and of course for BC Code purposes too).



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Client Identification vs. Verification

- Separate but related concepts
- Identification refers to the minimum information a lawyer must obtain and record about the client (easy)
- Verification is required when there is a “financial transaction” (**new - source of money and monitoring obligations are also triggered when a FT**)
- Verification refers to taking the required steps to confirm that the client is who they say they are (more work)

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Identification Standard Stricter – R.3-100

Before 2020

- Lawyer *must make reasonable efforts* to obtain and, if obtained, record the applicable client information set out in R. 3-100 (1) (unless exempted in R. 3-99)
- No physical meeting required

Effective January 1, 2020

- Lawyer **must obtain and record, with the applicable date**, the client information set out in R. 3-100 (unless exempted in R. 3-99)
- No physical meeting required

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Verification Standard Stronger – R. 3-102

Before 2020

The lawyer *must take reasonable steps* to verify the client's identity using what the lawyer *reasonably considers to be reliable*, independent source documents, data or information
Independent source documents may include . . .

Effective January 1, 2020

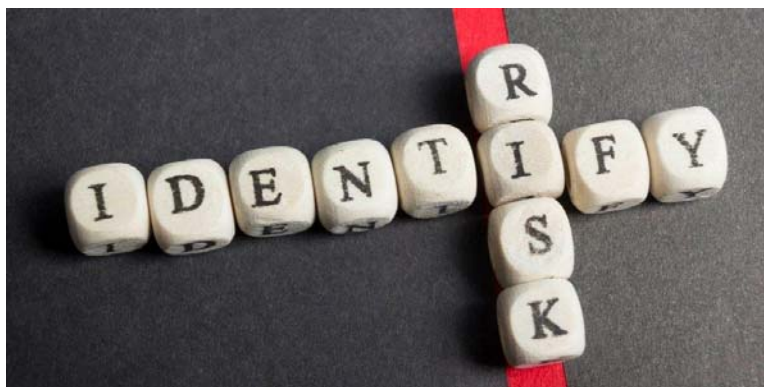
The lawyer *must*

- (a) obtain from the client and record, with the applicable date, information about the source of “money”, and
- (b) verify the identity of the client using documents or information described . . .

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Source of Money – Part of Your Risk Assessment

The source of money for financial transactions is the crux of AML, a key factor in assessing if you will act for a client.

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Source of Money in the CIV Rules - **New**

The requirement to obtain information about the SOM in respect of a FT and record it with the applicable date specifically appears **three times** in the CIV rules effective January 1, 2020:

1. Rule 3-102(1)(a) – the overall requirement
2. Rule 3-103(4)(b)(ii) - related to organizations
3. Rule 3-110 (1)(a)(ii) – for monitoring

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Source of Money Information - **New**

Practically, you will want to obtain SOM information close to the start of a retainer as part of the verification process (recognize that you may ask about SOM more than once)

Some relevant SOM information to obtain is as follows:

- payer's full name, occupation and contact information
- relationship of payer to client (may be the client)
- date the lawyer received the money from the payer

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Source of Money Information (**continued**)

- economic activity or action that generated the money (e.g. settlement funds, bank loan, savings from salary)
- form in which the lawyer received the money (e.g. cheque, bank draft)
- full name and address of all financial institutions or other entities through which the payer processed or transmitted the money to the lawyer
- any other information relevant to determining the SOM

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Source of Money – Documents?

- Lawyers are required to apply their professional judgment to assess risk.
- To comply with R. 3-102(a), in the absence of suspicious circumstances, a lawyer may accept a client's explanation of the economic activity or action that generated the SOM without obtaining copies of supporting documents

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Source of Money – Documents (cont'd)

- Lawyers may choose to create SOM forms for clients whose identity must be verified, asking such clients to complete the form with the applicable date (could be repeated for R. 3-110)
- Having a SOM form on file, completed by the client, may be useful, however, it will not always mean that a lawyer has met the requirements in every circumstance.
- Lawyers need to ensure compliance with the BC Code and the Rules when assessing whether to obtain supporting documents to substantiate a client's information

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Source of Money – Accounting, Cash

Remember your Part 3 – Division 7 obligations too and ask an auditor if you have accounting or cash questions:

- Rules 1 (“funds,” “general funds”, “trust funds” defined), 3-53 (“cash” defined), 3-59 (cash transactions), 3-68(a) (source and form of funds), 3-69 (source of funds), 3-70 (record of cash transactions)

Also see Buchanan's advice columns in the Fall 2019 and Summer 2019 Benchers' Bulletins (*Rule amendments enhance Law Society's anti-money laundering measures; AML cash transaction rule essentials*)

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Individuals - Verifying ID – 3 Methods (new)

Before 2020

Valid original government issued-identification

Effective January 1, 2020

Valid, original and **current** documents and information:

1. Photo ID method: government-issued ID, or
2. Credit file method: in existence in Canada for at least three years, or
3. Dual process method: information from two different and reliable independent sources

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Individuals – Photo ID Method

- Valid, original and current (unexpired) ID issued by the government of Canada, a province or territory or a foreign government, other than a municipal government
- Must contain the individual's name and photo, and be used in the client's physical presence to verify that the name and photo are those of the client
- (Note: Also used for verifying ID of an organization's instructing individual)

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Individuals – Credit File Method (new)

- Verify ID by individual's **valid and current** credit file information located in Canada, in existence for at least 3 years (not a credit assessment)
- Must obtain the information directly from a Canadian credit bureau or a third-party vendor authorized by one; record and retain the information, with the date of verification and reference number
- Must verify that the name, address and DOB match information from individual (historical credit file is not acceptable; must be current)
- The client's physical presence isn't required during verification

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Individuals – Dual Process Method (new)

Review **valid and current information** from two different independent and reliable sources to verify the individual's ID. You would use two of the three following sources:

- information that contains the individual's name and address
- information that contains the individual's name and DOB
- information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution

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Individuals – Dual Process Method (cont'd)

- The individual, the lawyer or an agent cannot be a source to verify the individual's identity
- A reliable source is an originator or issuer of information that you trust and it should be well known, reputable and independent (federal, provincial, territorial and municipal levels of government, Crown corporations, financial institutions, utility providers)
- If a document is used as part of the process, it must be **original** (R. 3-102 (3) says an electronic image of a document is not a document or information for the purposes of R. 3-102)

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Using an Agent to Verify ID – R. 3-104

- Lawyer may retain an agent to verify client ID if the client is **inside Canada (new)**
- The commissioner of oaths and guarantor rules for verification inside Canada were rescinded
- A lawyer **must retain an agent to verify the client's ID if the client is not in Canada** and is not physically present before the lawyer (not new)



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Using an Agent (continued)

- The lawyer and the agent must have an agreement or arrangement in writing to obtain the required information
- The agent should be someone reputable who takes the role seriously, will carry out the work and provide you with all of the information required (lawyer not required)
- [Sample Agreement with Agent](#) updated on website
- The agent is the lawyer's agent, not the client's agent

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Watch Out for Rogue Clients During the Agent Process

Criminals may try to set up phony agent ruses to elude verification. You are responsible for verification even if you retain an agent to do it on your behalf. Be careful who you choose.

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Verifying Organizations – R. 3-102

Registered pursuant to legislation

- Written confirmation from a government registry of the organization's existence (such as a company or society), name, address, including directors names where applicable
- Examples: certificate of corporate status, a copy of a record that is required to be filed annually or similar record

Unregistered

- A copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record confirming its existence
- Examples: trust or partnership agreement, articles of association, or any other similar record confirming its existence

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Identifying Directors – R. 3-103

Before 2020

As part of verifying an organization, a lawyer must make *reasonable efforts* to obtain and if obtained, record the name and occupation of all directors (not a "securities dealer")

Effective January 1, 2020

As part of verifying an organization, a lawyer **must**

- **obtain and record, with the applicable date**, the names of all directors (not a "securities dealer")
- **take reasonable measures to confirm the information's accuracy**
- **record, with the applicable dates, all measures taken to confirm accuracy**

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Beneficial Ownership

Criminals may try to conceal their identity through beneficial ownership of an organization (e.g. companies, trusts). Try to obtain the identity of the individual who is the actual owner and controller.



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Legal and Beneficial Ownership

Legal Owner

- Legal owner holds legal title to property or asset in his or her name
- Often the legal owner and the beneficial owner are the same

Beneficial Owner

- The beneficial owner enjoys certain benefits of owning property or assets, even if the owner's name does not appear on legal title
- Criminals try to hide their individual identities through companies, trusts and other arrangements to facilitate ML and tax evasion
- Individuals are actual owners and controllers (don't stop at the company level)

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Shareholders, Owners - R. 3-103

Before 2020

- Must make *reasonable efforts* to obtain and if obtained, record the name, address and occupation of all persons who own 25 per cent or more of the organization or shares of the organization [and abide by BC Code rules]

After January 1, 2020

- More detailed obligations regarding beneficial ownership, and identifying actual individual owner and controller

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Shareholders, Owners - R. 3-103 (new)

Must make *reasonable efforts to obtain* and if obtained, record with the applicable date:

- the names and addresses of all persons who own, *directly or indirectly*, 25 per cent or more of the organization or its shares
- *the names and addresses of all trustees and all known beneficiaries and settlors of the trust*
- information identifying ownership, control and structure

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Shareholders, Owners - R. 3-103 (cont'd)

- A lawyer must take reasonable measures to *confirm the accuracy of information* obtained under this rule
- A lawyer must keep a record, with the applicable dates, of
 - all efforts made under subrule (1)(b)
 - all measures taken to confirm the accuracy of information obtained under this rule

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Client Information or Accuracy Issues?

If you are not able to obtain the R 3-103 information or if you cannot confirm its accuracy, then:

- Do not act, or
- Abide by R. 3-103(4), ascertaining the identity of the organization's most senior managing officer and the other requirements. Keep a record, with the date, of the results of your assessment and determination.
- Also consider R. 3-109, BC Code r. 3.2-7 to 3.2-8

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Timing of Verification for Organizations

Before 2020

- Verify the organization's ID within 60 days of engaging in a financial transaction
- Verify the ID of the instructing individual(s) at the time the lawyer provides legal services in respect of a financial transaction

Effective January 1, 2020

- Verify the organization's ID promptly and, in any event, within **30 days (new)**
- Verify the ID of the instructing individual(s) at the time the lawyer provides legal services in respect of a financial transaction

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Verification exemption changes – R. 3-101

Before 2020

- Verification rules do not apply in circumstances stated in R. 3-101, including when a lawyer pays or receives money
 - pursuant to the order of a court or other tribunal
 - as a settlement of any of any legal or administrative proceeding

Effective January 1, 2020

- Two exemptions were rescinded. Verification rules, including monitoring, **now apply** to when a lawyer pays or receives money:
- pursuant to the order of a court or other tribunal
 - as a settlement of any of any legal or administrative proceeding

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For More Information

- *New client ID and verification requirements* in the upcoming Winter 2019 Benchers' Bulletin
- For CIV questions, you are welcome to contact me at 604.697.5816 or bbuchanan@lsbc.org
- For trust rule questions, contact a trust auditor at trustaccounting@lsbc.org or 604.697.5810

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Thank you!
Barbara

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